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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,250	02/18/2004	Floyd Backes	160-034	3137
34845 7590 02/21/2007 McGUINNESS & MANARAS LLP 125 NAGOG PARK ACTON, MA 01720			EXAMINER DUONG, FRANK	
			ART UNIT 2616	PAPER NUMBER
			MAIL DATE 02/21/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/781,250

Applicant(s)

BACKES ET AL.

Examiner

Frank Duong

Art Unit

2616

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 February 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: Applicants' arguments are not persuasive for the following rationales: In the Remarks of the outstanding response, on page 5, pertaining the rejection of claims 1-3 and 5-6 under 35 U.S.C. 102(b) rejection as being anticipated by Pinard, Applicants argue "claim 1 distinguishes Pinard by reciting 'logic for ascertaining ... whether the wireless device should attempt to associate with an alternative access point ... on indications of a level of attenuation of signal strength of transmission from the alternative access point where the alternative access point transmits at less than full power.'" To support the argument the Applicants further state "In other words, the attenuation being considered is that of the access point itself rather than the environment between the access point and the station." In response Examiner respectfully disagrees and asserts the interpretation of Pinard to correspond to the disputed limitation is proper. In Pinard, col. 5, line 65 to col. 6, line 13, as clearly pointed out in the Office Action, it is disclosed after "the RSSI values are calculated, an "eligible group" of access point is selected, including all access point having an RSSI value no more than six counts below the best detected RSSI value. From that group the access point having the lowest load factor (LF) is determined. The load factor is a measure of how many mobile units are currently associated with a given access point; in the present case the load factor is presented by a simple numerical value representing the exact number of associated mobile units. The access point thus selected is the most eligible access point and the mobile unit then selects that access point to associate." The recitation thereat clearly anticipates the disputed limitation in the present condition for either level of RSSI or load factor can be equated to correspond to the disputed limitation. As for the argument "the attenuation being considered is that of the access point itself rather than the environment between the access point and the station" Examiner's response is that there is no such language in the claim after a careful review of the disputed claim. Perhaps Applicants refer to certain features that are disclosed in the present application but not recited in the reject claims in making the contention that the Pinard reference fails to show certain feature of Applicants' invention. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Perhaps the Applicants should incorporate the above argument into the rejected claims in a response to this Office Action to better distinguish Applicants' invention from that taught by Pinard. Due to the arguments are not persuasive and the response fails to place the instant application in a favorable condition for allowance, the rejection is maintained.



FRANK DUONG
PRIMARY EXAMINER

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In the claims:

1. (previously presented) A program product for use by a wireless device in a wireless communications environment, the program product comprising a computer readable medium having embodied therein a computer program for storing data, the computer program comprising:

logic for associating the wireless device with a current access point;

logic for ascertaining, by the wireless device, whether the wireless device should attempt to associate with an alternative access point, the ascertaining logic operating at least in-part on indications of a level of attenuation of signal strength of transmissions from the alternative access point where the alternative access point transmits at less than full power, and

logic for requesting association with the alternative access point if it is ascertained that the wireless device should attempt to associate with said alternative access point.

2. (previously presented) The program product of claim 1 further comprising:

logic for automatically collecting, by the wireless device, information about the alternative access point, including an indication of the level of attenuation.

3. (previously presented) The program product of claim 2 wherein the logic for ascertaining ascertains that the wireless device should attempt to associate with the alternative access point if the alternative access point is closer than the current access point in terms of a biased distance which accounts for AP loading.

4. (previously presented) The program product of claim 3 wherein the logic for ascertaining ascertains that the alternative access point is closer than the current access point by:

calculating a first biased distance between the wireless device and the current access point based on “x” samples;

calculating a second biased distance between the wireless device and the alternative access point based on “y” samples where “y” is less than “x”; and

ascertaining that the alternative access point is closer than the current access point if the second biased distance is less than the first biased distance.

5. (previously presented) The program product of claim 3 wherein the logic for requesting association requests association by sending a message to the alternative access point.

6. (previously presented) The program product of claim 1 wherein the ascertaining logic also employs maximum potential signal strength of the alternative access point.